

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DORCUS DEWAYNE ALLEN,

Petitioner,

v.

BRENT BOMKAMP,

Respondent.

CASE NO. 3:20-cv-06143-RJB-JRC

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge J. Richard Creatura (Dkt. 23) and Respondent’s Objections to the Report and Recommendation (Dkt. 24). The Court has considered the R&R, the objections, Petitioner’s Response to Respondent’s Objections (Dkt. 28), and the remaining record.

I. BACKGROUND

On November 30, 2020, Petitioner Dorcus Dewayne Allen filed an application to proceed *informa pauperis* (“IFP”) (Dkt. 4), which was granted (Dkt. 5). On December 1, 2020, he filed a

1 petition under 28 U.S.C. § 2241 for a writ of habeas corpus. Dkt. 7.

2 The facts are complicated and recited in detail in the R&R, so the Court will not go into
3 detail here. *See* Dkt. 23. Essentially, Petitioner requests that the Court prohibit the State from
4 retrying him on four counts of first degree murder under an accomplice liability theory based on
5 his right to be free from double jeopardy.

6 In the R&R, the undersigned magistrate judge recommends that Mr. Allen’s petition be
7 denied, but that he be granted a certificate of appealability (“COA”). Dkt. 23. Only Respondent
8 objects to the R&R and only to the recommendation that Mr. Allen receive a COA. Dkt. 24.

9 II. DISCUSSION

10 A state prisoner seeking relief under 28 U.S.C. § 2241 may appeal a district court’s
11 dismissal of the petition only after obtaining a COA from a district or circuit judge. 28 U.S.C. §
12 2253(c)(2); *see Wilson v. Belleque*, 554 F.3d 816, 825 (9th Cir. 2009). To be issued a COA, the
13 applicant must make “a substantial showing of the denial of a constitutional right.” *Id.* A court
14 “should not decline the application for a COA merely because it believes the applicant will not
15 demonstrate an entitlement to relief.” *Miller-El v. Cockrell*, 537 U.S. 332, 337 (2003). “Thus, . .
16 . the standard for obtaining a COA is not a particularly exacting one.” *Wilson*, 554 F.3d at 826.
17 It demands only that “jurists of reason would find it debatable wither the petition states a valid
18 claim of the denial of a constitutional right.” *Id.*

19 This case is similar to *Wilson v. Belleque*, both of which include complicated procedural
20 histories, mixed verdicts by the jury, retrials, and legitimate debate about the effect of double
21 jeopardy. *See id.* As in *Wilson*, a COA is appropriate in this case. Although this Court finds
22 that Mr. Allen does not state a valid claim of the denial of a constitutional right, reasonable
23 jurists could debate that decision.

1 Therefore, the Court hereby **ORDERS**:

- 2 • The Court adopts the Report and Recommendation (Dkt. 23);
- 3 • Petitioner's federal habeas corpus petition is dismissed with prejudice;
- 4 • A certificate of appealability is granted in this case, and petitioner's *in forma*
- 5 *pauperis* status may continue in the event of any appeal.

6 The Clerk is directed to send uncertified copies of this Order to all counsel of record and

7 to any party appearing *pro se* at said party's last known address.

8 Dated this 24th day of May, 2021.

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10 ROBERT J. BRYAN

11 United States District Judge

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